

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	
)	Docket No. 12-0457
)	
Development and adoption of rules)	
concerning rate case treatment)	
of charitable contributions)	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY TO RESPONSE OF CITIZENS UTILITY BOARD TO
STAFF MOTION FOR STAY**

Pursuant to Section 200.190 of the Commission’s Rules of Practice, 83 Ill. Admin. Code 200.190, and the Notice of Administrative Law Judge’s (“ALJ”) Ruling issued in this proceeding on April 2, 2015, now comes Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, with this Reply to the Citizens Utility Board (“CUB”) Response to Staff Motion for Stay. Staff shares the concern expressed by CUB regarding a desire to not unnecessarily delay the proceeding in this docket. It is precisely because of this desire to expedite and resolve this important matter as quickly as possible, however, that Staff believes that a brief delay at this time would be prudent in order to avoid potentially greater delays down the road. In support of this Reply, Staff states as follows:

1. On April 1, 2015, Staff filed a Reply Brief on Exceptions (“RBOE”) containing, among other things, a Motion for Stay pending the resolution of amendments to Section 9-227 of the Public Utilities Act, 220 ILCS 5/9-227, currently before the General Assembly in S.B. 2028. Staff RBOE, 25. As Section 9-227 is the subject of this

rulemaking, Staff moved for this short stay in an effort to avoid prematurely moving in to the First Notice period, which would begin the one-year statutory clock to run pursuant to the Illinois Administrative Procedure Act, 5 ILCS 100/5-40(e). *Id.*

2. On April 9, 2015, separate responses were filed by MidAmerican Energy Company, Ameren Illinois Company, and North Shore Gas Company and The Peoples Gas Light and Coke Company, in which those parties indicated that they do not object to or oppose Staff's motion for a stay pending the outcome of the related legislation.

3. On April 9, 2015, CUB also filed a response to Staff's motion for a stay, requesting that the motion be denied. CUB argued that SB 2028 was not out of an assigned committee by the March 27, 2015 deadline, but it noted that the Senate President may schedule alternative deadlines for any legislative action pursuant to written notice filed with the Senate Secretary pursuant to Senate Rule 2-10(e). CUB Response, 3.

4. CUB further argued that even if a circumstance arose where the language of the proposed amendment was resurrected in SB 2028 or another bill during this legislative session, there is no need to delay a Commission Final Order on the Proposed Rule or First Notice period. CUB reasons, among other things, that the First Notice Period lasts at least 45 days, that the period begins on the first day the notice appears in the Illinois Register, and that during that time, the agency accepts comments from interested persons, and may hold public hearings on the proposed rulemaking. CUB Response, 3.

5. Staff does not dispute the statutory rulemaking process. As CUB's detailed description of the particularized lengthy process delineates in its paragraph 6, however, there are many steps that must be accomplished during the one-year period

contemplated by the statute, 5 ILCS 100/5-40, by which the Commission must act in order for a rule to become effective. See, CUB Response, 3; 5 ILCS 5-40(e). This limited timeframe is inclusive of both the First and Second Notice periods. There is little extra time built into the year in which to conduct additional workshops or contemplate any new statutory language.

6. In an effort to avoid disrupting the three years already dedicated to this important issue by all of the stakeholders in this proceeding, therefore, Staff is recommending a short stay of the proceeding until the end of this current legislative session. Senator Duffy only introduced his related proposed legislation in SB 2028 on March 11, 2015, at which time it was referred to Assignments. The legislation has not been languishing in a committee since January. This recent development suggests some current interest in possible action on the very statutory provision at the heart of this rulemaking docket. Staff is merely suggesting that the Commission allow this legislative session play out in order to ensure that any proposed rule resulting in this docket not be made moot by related legislative action. A short delay to assess what transpires on this matter in the legislature would ensure the Commission the most flexibility in determining the best manner of proceeding in order to work consistent with the intent of the General Assembly on achieving a fair, just and reasonable outcome to protect consumers, as well as the most efficient use of resources, without working against any efforts of the General Assembly.

7. Staff is sympathetic to the concerns of CUB and does not believe that a lengthy delay is required. To the contrary, the Illinois Senate adjourns on May 31, 2015. Staff requests that the matter be held just for this brief duration in order to confirm that the

statutory language upon which the proposed rule is based is not substantively changed such that the efforts in this docket would need to be revisited.

8. The Commission has the authority to grant such a request. See, *Re Illinois Power Co.*, ICC Supplemental Order, 1992 WL 475748, Docket No. 91-0147 (March 31, 1992). Should this matter move into the First Notice period, beginning the statutory clock, and amendments to the underlying legislation are made such that further workshops are required, potentially pushing the timeframe beyond the one-year deadline, then it is possible that the process would lapse by operation of law causing the rulemaking to have to be reset and begin again. Such potentially more lengthy delays could cause irreparable harm in further postponement of protections to consumers, waste of resources to all stakeholders, including this Commission, and increased costs as a result. Because there is an opportunity to avoid those additional more costly delays, Staff recommends a short stay at this time pending the outcome of the related Section 9-227 matter in this current legislative session.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that its motion for stay be granted and that this matter be held in abeyance until the end of the current Illinois state legislative session or May 31, 2015.

Respectfully submitted,

/s/

Christine F. Ericson
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601

Phone: (312) 793-2877

Fax: (312) 793-1556
cericson@icc.illinois.gov

Counsel for Staff of the
Illinois Commerce Commission

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